

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

VICTOR CANTU,

Plaintiff,

V.

**UNITED PROPERTY & CASUALTY
INSURANCE COMPANY AND
AND JESSICA HERNANDEZ**

Defendants.

CIVIL ACTION

NO.:

JURY DEMAND

**DEFENDANT UNITED PROPERTY AND CASUALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant United Property and Casualty Insurance Company (“UPC”) files this Notice of Removal:

I. Factual and Procedural Background

1. On September 9, 2016, Plaintiff Victor Cantu (“Plaintiff”) filed his Original Petition in Hidalgo County, Texas against UPC and Jessica Hernandez, located at 7907 High Lonesome, San Antonio, Texas 78254. The lawsuit arises out of a claim Plaintiff made for damages to his property located at 2506 Timberwood Ave., Mission, Texas 78574, under insurance policy no. UTH 0232668 00 42 issued by United Property & Casualty Insurance Company, effective July 13, 2015 through July 13, 2016.

2. Plaintiff served UPC with a copy of the Original Petition on or about September 20, 2016. Plaintiff served Jessica Hernandez from San Antonio, Texas with a copy of the Original Petition on or about September 17, 2016.

3. On September 23, 2016, Plaintiff filed a First Amended Petition against UPC and Jessica Hernandez, located 12655 Kuykendahl Road No. 6208, Houston, Texas 77090.¹

4. Upon information and belief, Jessica Hernandez from Houston, Texas, named in Plaintiff's First Amended Petition, has not been served.

5. Jessica Hernandez, who adjusted or otherwise worked on claim no. 2016TX020510, with regard to the property at 2506 Timberwood Ave., Mission, Texas 78574 (the subject of this lawsuit), has not been named as a defendant.

6. UPC files this notice of removal within 30 days of receiving Plaintiff's initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

7. As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an index of matters being filed. A copy of the Case Summary Sheet is attached as Exhibit "B." A copy of the Civil Case Information Sheet is attached as Exhibit "C," and a copy of Plaintiff's Original Petition is attached as Exhibit "D." A letter from the clerk issuing citations for service of the Original Petition on UPC and Jessica Hernandez is attached hereto as Exhibit "E." A copy of the return of service of the Original Petition served on UPC is attached as Exhibit "F" and a copy for Jessica Hernandez is attached as Exhibit "G." A copy of Plaintiff's First Amended Petition is attached hereto as Exhibit "H." A letter from the clerk issuing citation for service of the First Amended Petition on Jessica Hernandez is attached hereto as Exhibit "I." A copy of UPC's Original Answer to Plaintiff's Original Petition is attached as Exhibit "J." Finally, the list of Counsel and Parties to the Case is attached as Exhibit "K." A copy of this Notice is also being filed with the state court and served upon the Plaintiff.

¹ UPC has not been served with Plaintiff's First Amended Petition.

8. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Hidalgo County, Texas, the place where the removed action has been pending.

II. Basis for Removal

9. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

A. The Proper Parties Are Of Diverse Citizenship.

10. Plaintiff is, and was at the time the lawsuit was filed, a resident and citizen of Texas.

11. UPC was at the time this action was commenced, and still is, a foreign (Florida) property and casualty insurance company authorized to do business in the State of Texas. UPC is organized under Chapter 982 of the Texas Insurance Code.

12. Jessica Hernandez, a citizen and resident of Florida, who adjusted or otherwise worked on claim no. 2016TX020510, regarding the property at 2506 Timberwood Ave., Mission, Texas 78574 (which is the subject of this lawsuit), has not been named as a defendant.

13. Upon information and belief, Jessica Hernandez, named in Plaintiff's Original Petition and served with this lawsuit at 7907 High Lonesome, San Antonio, Texas 78254, is not a proper party. There is a defect in parties in that Jessica Hernandez from San Antonio, Texas, did not adjust or otherwise work on this claim.

14. Jessica Hernandez named in Plaintiff's First Amended Petition, not yet served with the lawsuit, is also not a proper party. Upon information and belief, Jessica Hernandez from Houston, Texas did not adjust or otherwise work on this claim.

15. Because Plaintiff is a citizen of Texas and Defendant UPC is a citizen of Florida, complete diversity of citizenship exists among the proper parties.

B. The Amount in Controversy Exceeds \$75,000.00.

16. This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff's Original Petition expressly alleges that Plaintiff seeks damages "over \$100,000 but not more than \$200,000." *See* Exhibit C § XIII, p. 13.

III. Conclusion and Prayer

17. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. UPC hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

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**COUNSEL FOR DEFENDANT UNITED
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CERTIFICATE OF SERVICE

This is to certify that on the 17th day of October, 2016, a true and correct copy of the foregoing was delivered to the following counsel of record by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

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/s/ Rhonda J. Thompson
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